

# **Appendix I**

## **Seat Management Services for PC Products**

SUPPLEMENTAL AGREEMENT for  
SEAT MANAGEMENT SERVICES  
State of Texas Department of Information Resources  
And  
Hewlett-Packard Company

### **Summary:**

In order to procure Seat Management Services from HP (“Vendor”) using the State of Texas Department of Information Resources (“DIR”) Agreement DIR-SDD-223 (“CONTRACT”) and DIR-SDD-223OOS with Vendor, a Customer (regardless of their location in or out of Texas) shall be required to negotiate with Vendor an independent, “Supplemental Agreement” that shall be based upon the following terms, conditions and processes.

Vendor’s pay per use services for all printer/imaging product lines are specifically excluded from this Contract.

Customer and Vendor acknowledge that DIR is not a party to any Supplemental Agreement.

At a minimum, any Supplemental Agreement for Seat Management Services shall include the following terms and conditions and shall govern all Customer procurements under the Contract for Seat Management Services. The following terms are intended to provide a general framework for any final, negotiated Seat Management Services Supplemental Agreement.

### **1. Supplement Agreement**

Other than a Supplemental Agreement that is required to specify the Seat Management Services to be provided, the Customer shall not be required to enter into any separate agreements (such as lease agreements) under the Contract.

The Supplemental Agreement shall state, at a minimum, the term, product list, invoicing, pricing, payment dates, service level requirements, Customer and Vendor responsibilities and scope and nature of the services to be performed.

### **2. Hardware Products**

A Customer may acquire PC products (desktops, portables, servers, and associated components/accessories) available under the Contract as an integral component of the Seat Management Service provided by Order Fulfiller. All products to be provided under the Seat Management Services shall be specified within the Supplemental Agreement as an attached Exhibit.

### **3. Software Products**

3.1 In the event that a particular software product is not listed on the Contract price list or is otherwise not available for purchase under the Contract, then for all Seat Management Services contracted for under this Contract, Order Fulfiller shall procure the commodity item software, (as further defined by DIR under XI.g. Section 5 of the Contract), through existing

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DIR commodity software procurement contracts for State Agencies and other DIR Customers for Seat Services.

3.2 Order Fulfiller shall not add any margin to the software procured for Customers under DIR Contracts.

3.3 Order Fulfiller agrees to make all payments to DIR contracted vendors following terms of net 30 days for all such software.

3.4 Any “commodity item” software product procured by the Order Fulfiller on behalf of the Customer, shall comply with the then current software agreement in place between DIR and the applicable software publisher or reseller.

3.5 Customer’s rights to perpetual licenses acquired by the Order Fulfiller on behalf of the Customer, through this type of transaction, shall pass to the Customer and the Customer shall retain all applicable rights of the perpetual license at the end of the Supplemental Agreement term, as if the Customer was to purchase the commodity item software directly from a DIR commodity item software contracted vendor.

For example, if a Customer requests that Microsoft Office is 2003<sup>®</sup> be installed on a desktop unit, and Microsoft Office 2003<sup>®</sup> is defined to be a “commodity item” software by DIR that is not available for purchase under this Contract, then Order Fulfiller shall obtain the Microsoft Office 2003<sup>®</sup> license from the then current DIR vendor contracted for the product, on behalf of the Customer.

The requesting Customer would be listed as the Microsoft Office 2003<sup>®</sup> licensee retaining its right to the license at the end of the Supplemental Agreement. Within this type of transaction, Order Fulfiller shall in no way have any rights in retaining the license for their own use and benefit at the end of a Supplemental Agreement.

#### **4. Installation**

Installation services acquired under this Contract shall be completed according to a plan and schedule mutually developed by the Order Fulfiller and Customer as specified and stated within the Customer’s Supplemental Agreement.

#### **5. Help Desk Services**

Help Desk services shall be provided through a toll-free telephone number to provide assistance involving failures of hardware, failures of software applications or operating system, and how-to assistance on software applications, or other. All help desk services shall be specified and stated within the Customer’s Supplemental Agreement.

#### **6. Desk-Side Services**

When required for hardware component and software malfunctions, a desk-side service technician shall be dispatched in a time frame as agreed to between the Customer and Order Fulfiller, and shall be specified and stated within the Supplemental Agreement. The following services may be specified and stated within a Customer’s Supplemental

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Agreement; i) services for hardware provided shall include diagnosis, repair and return to service of malfunctioning equipment. Services for software included shall include trouble shooting, loading, reloading, reconfiguration, and adding maintenance patches and releases.

#### **7. Addition of Equipment**

In the event that additional equipment needs to be added to the original equipment base, the Customer and Order Fulfiller shall agree to the time period equipment is to be obtained for, and costs for provisions of the equipment and any additional services. The Supplemental Agreement shall be amended to list the additional equipment or services and reflect the new amounts incurred by the equipment or service addition, or a new Supplemental Agreement shall be executed.

#### **8. Loss/Damage of Equipment**

The Customer shall be responsible for equipment provided under the Supplemental Agreement while in their possession, except for loss or damage caused by negligence of the Order Fulfiller. The Customer shall be responsible for equipment location reconciliation annually. In the event of theft, loss or damage beyond repair of equipment while in possession of the Customer, Order Fulfiller and the Customer shall mutually agree upon a fair market residual value of the equipment concerned. The Customer shall reimburse Order Fulfiller the agreed amount. Order Fulfiller shall provide, as a replacement, equipment of comparable or greater performance and configuration at a cost as mutually agreed. The Customer shall continue service payments at the same level and duration as for the original equipment unless otherwise mutually agreed.

#### **9. Moves, Adds, or Changes**

The Customer may temporarily require service and requisite support for additional needs of a specified duration. The Customer and Order Fulfiller shall review the scope of effort and equipment required and shall mutually agree upon pricing for delivery of those services. Order Fulfiller shall develop an Agreement document and/or Statement of Work for acceptance by both parties, which will govern the delivery of Seat Services and pricing. Delivery of Seat Services will be subject to those performance levels provided within the Supplemental Agreement or as specified within the Agreement document/Statement of Work. Order Fulfiller may provide estimated rates in the Supplement Agreement for staff that would most likely be required for moves, adds and changes.

#### **10. Pricing**

All pricing for Seat Services shall be stated in the Supplemental Agreement as negotiated between the Customer and Order Fulfiller. All prices quoted by the Order Fulfiller to Customers shall include the DIR Administrative Fee, as specified within the Contract.

#### **11. Invoicing and Payments**

In addition to complying with Appendix A Sections 7.B, Invoicing, and 7.C, Payment, payment for Seat Services shall be made on an annual basis in advance for each calendar year of the service lot, or as mutually agreed to between the parties and stated within the Supplemental Agreement.

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#### **12. Supplemental Agreement Survival**

Supplemental Agreements that are entered into between Order Fulfiller and a Customer under the terms and conditions of this Contract shall survive the termination or expiration of this Contract. However, Order Fulfiller and a Customer cannot enter into any new Supplemental Agreement, based upon the Contract, that is past the expiration or termination date of this Contract. Any provisions of this Contract shall survive termination or expiration for the benefit of any Supplemental Agreement entered hereunder.

#### **13. Conflict of Term**

13.1 Specific Seat Services to be performed for Customers shall be governed by the terms and conditions as entered into and set-forth within the Supplemental Agreement.

13.2 The Customer may negotiate more advantageous terms and conditions and pricing, based on individual needs, directly with the Order Fulfiller and such terms and conditions shall be stated within a Supplemental Agreement and be given effect.

13.3 In the event of a conflict between a term of the Contract or a Customer's Supplemental Agreement, the Supplemental Agreement term shall control.

13.4 DIR shall not be a party to any Supplemental Agreement executed between the Order Fulfiller and Customer, except to offer such Seat Services through this Contract.

#### **14. Compliance**

14.1 Compliance with a Supplemental Agreement is the responsibility of the Customer.

14.2 DIR shall not be responsible for any Customer's compliance as it pertains to a Supplemental Agreement.

14.3 If DIR procures Seat Services for its own use under this Contract, it shall be responsible for its own negotiation and compliance of the applicable Supplemental Agreement terms and conditions.

#### **15. Termination**

In the event of an early termination the parties will agree, when applicable, to develop a mutually agreeable termination fee schedule. Conversely, in the event that the Seat Management Service fees are prepaid by the Customer, the parties will agree to a repayment schedule for unexpended fees.